

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:	Case No. 17-42115-KAC
	Chapter 11 Case
The Yoga Center, LLC	
Debtor.	

NOTICE OF HEARING AND MOTION

TO: The debtor(s) and other entities specified in Local Rule 9013-3.

1. CLPF-Velo, LLC moves the court for the relief requested below and gives notice of hearing.
2. The court will hold a hearing on this motion at 1:30 p.m. on November 22, 2017, in Courtroom No. 2C at the United States Courthouse, at 316 North Robert Street, in Saint Paul, Minnesota 55101.
3. Any response to this motion must be filed and served not later than October 26, 2017, which is five days before the time set for the hearing (including Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
4. This court has jurisdiction over this motion pursuant to 28 USC §§ 157 and 1334, FRBP 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this chapter 11 case was filed on July 13, 2017. The case is now pending in this court.
5. This motion arises under 11 USC § 362(d)(1) and FRBP 4001. This motion is filed under FRBP 9014. Movant requests relief with respect to an unexpired non-residential lease. Specifically, Movant requests relief from the automatic stay in order to exercise its state law remedies and proceed with eviction action in Hennepin County Housing Court.

Debtor is a tenant under an unexpired written non-residential lease with Movant (landlord). Monthly rent is \$13,063.33. Debtor has failed to pay any rent since filing the bankruptcy petition.

Wherefore, CLPF-Velo, LLC moves the court for an order that lifts the automatic stay to permit Movant to evict Debtor and such other relief as may be just and equitable.

HANBERY & TURNER P.A.

Dated: November 8, 2017

/s/ Christopher Kalla

Christopher T. Kalla, #0325818

Douglass E. Turner, #0279948

33 South 6th Street, Suite 4160

Minneapolis, MN 55402

Phone: 612-340-9855

kalla@hnclaw.com

turner@hnclaw.com

Verification. I, Christopher T. Kalla, as attorney for the moving party, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: November 8, 2017

Signed: /s/ Christopher Kalla

Name and Address of Subscriber

**UNITED STATES BANKRUPTCY COURT
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**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR RELIEF
FROM STAY IN ORDER TO COMMENCE EVICTION PROCEEDINGS**

INTRODUCTION

CLPF-Velo, LLC brings this motion for relief from the automatic stay in order to commence eviction proceedings against Debtor in Hennepin County Housing Court.

FACTUAL BACKGROUND

There are no facts at issue. Debtor is a tenant that leases real property from Movant located at 103 North Second Street, Minneapolis, MN 55401. There is an unexpired written commercial lease between the parties. Monthly rent is \$13,063.33. The lease term began on August 1, 2016. The duration of the lease term is seven years and three months with Debtor having the right to extend the lease term for two successive periods of five years each.

This bankruptcy petition was filed on July 13, 2017. At that time, rent was due and owing for July 2017 (\$13,063.33). Debtor has not tendered any payment to Movant since before the filing of this bankruptcy petition. Pre-petition debt is

\$13,063.33. Post-petition debt is rent owing for August, September, October and November 2017 for a total of \$52,252.32 (4 x \$13,063.33) – exclusive of any applicable late fees.

ARGUMENT

Debtor's proposal leaves Movant without adequate protection.

In the case of an unexpired lease of non-residential real property, the debtor-in-possession has a limited period of time from the date of the petition to assume or reject the lease. 11 U.S.C. § 365(d)(4). Debtor calculates this date to be November 10, 2017 [docket entry 22, p. 3]. During this period, the debtor-in-possession is required to perform the debtor's obligations under the lease agreement – including payment of all rents under the lease until the lease is assumed or rejected. 11 U.S.C. § 365(d)(3); In re MP Investments, L.L.C., No. 10-02659-ALS11, 2010 WL 7609465, at *5 (Bankr. S.D. Iowa Nov. 18, 2010); In re Worths Stores Corp., 135 B.R. 112, 115 (Bankr. E.D. Mo.1991).

If the debtor-in-possession does not perform such obligations, cause exists to lift the automatic stay under § 362(d)(1). 11 U.S.C. § 362(d)(1). “Whether a debtor has timely performed its post-petition obligations is relevant to evaluating the assurance of future performance.” In re MP Investments, L.L.C., No. 10-02659-ALS11, 2010 WL 7609465, at *5 (Bankr. S.D. Iowa Nov. 18, 2010).

Here, in addition to the pre-petition debt, Debtor has failed to pay post-petition rent for four months. Debtor has filed a motion to extend the deadline by when it must either reject or assume the lease with Movant. Regardless of how the

court decided that motion, there is no legal or factual basis to further relieve Debtor from the ongoing post-petition lease obligations it has to pay monthly rent.

CONCLUSION

Movant requests that the Court lift the automatic stay so that it may exercise its state law remedies and commence eviction against Debtor for non-payment of rent.

HANBERY & TURNER P.A.

Dated: November 8, 2017

/s/ Christopher Kalla
Christopher T. Kalla, #0325818
Douglass E. Turner, #0279948
33 South 6th Street, Suite 4160
Minneapolis, MN 55402
Phone: 612-340-9855
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**UNITED STATES BANKRUPTCY COURT
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AFFIDAVIT

Liz Simpson, being duly sworn, deposes and states that:

1. I am the Multi-Site Business manager with Lincoln Property Company and the Velo Apartments. I manage the building where The Yoga Center, LLC rents space.
2. I am familiar with the manner in which Velo Apartments' books and records are created and maintained. I regularly use and rely upon these books and records in the performance of my duties. The books and records reviewed in support of this affidavit are made electronically by a person at or near the time the events occurred by a person with knowledge of the events they record. The books and records are maintained in the ordinary course of business, and it is the regular practice of the business to make such records.
3. Yoga Center, LLC entered into a lease with CLPF-Velo, LLC. Under the lease agreement, the monthly rent is: \$10,000.00 base rent: \$3,265.00 CAM charges; \$125.00 parking.

4. The last payment received from or on behalf of The Yoga Center, LLC was on June 8, 2017 in the amount of \$13,390.00 which brought the balance owing to \$0.00 and current through June 2017.
5. No payments have been received since June 8, 2017.
6. The current balance owing as of November 8, 2017 is \$66,950.00. This includes \$13,390.00 for the months of July, August, September, October, and November 2017.
7. Attached to this Affidavit marked as Exhibit A is a current copy of the ledger showing the balance owing for The Yoga Center, LLC.

I declare under penalty of perjury that everything I have stated in this document is true and correct to the best of my knowledge and belief. Minn. Stat. § 358.116.

Dated: November 8, 2017
State of Minnesota
County of Hennepin



Printed Name: Liz Simpson

LINCOLN PROPERTY COMPANY

a company for people. a company about people.

Date : 11/8/2017

Resident Ledgers

Code	<u>t1120833</u>	Property	<u>69335r</u>	Lease From	11/8/2016
Name	Yoga Center of Minneapolis, LLC	Unit	<u>R2</u>	Lease To	1/31/2024
Address	115 North Second Street	Status	Current	Move In	11/8/2016
	R2	Rent	10000	Move Out	
City St. Zip	Minneapolis, MN 55401	Phone(O)-		Phone(H)-	

Date	Description	Charge	Payment	Balance	Chg/Rec
10/13/2016	(Payable)	(20,360.06)		(20,360.06)	5788229
11/8/2016	Rent for 23 days	11,354.33		(9,005.73)	53360619
11/8/2016	RENT- no rent for first three months per lease. JH	(11,354.33)		(20,360.06)	53360632
11/8/2016	Security Deposit	13,063.33		(7,296.73)	53360700
11/8/2016	chk# PSID101965612--005905 Terminal PSID 101965612 - CHECK21		13,063.33	(20,360.06)	37460350
11/18/2016	(Payable)	(99,639.94)		(120,000.00)	5788232
12/12/2016	Chk# 1647 to payable		(20,360.06)	(99,639.94)	3006085
12/12/2016	Chk# 1648 to payable		(99,639.94)	0.00	3006086
2/1/2017	Actual Lease Rent (02/2017)	10,000.00		10,000.00	54653686
2/1/2017	CAM-Common Area Maint-Recovery (02/2017)	3,265.00		13,265.00	54653687
2/1/2017	Retail - Parking Income (02/2017)	125.00		13,390.00	54653688
2/7/2017	chk# PSID108085039--006281 Terminal PSID 108085039 - CHECK21		13,390.00	0.00	38166605
3/1/2017	Retail - Rental Income (03/2017)	10,000.00		10,000.00	55121171
3/1/2017	CAM-Common Area Maint-Recovery (03/2017)	3,265.00		13,265.00	55121172
3/1/2017	Retail - Parking Income (03/2017)	125.00		13,390.00	55121173
3/27/2017	chk# PSID111014685--006311 Terminal PSID 111014685 - CHECK21		13,390.00	0.00	38483968
4/1/2017	Retail - Rental Income (04/2017)	10,000.00		10,000.00	55622914
4/1/2017	CAM-Common Area Maint-Recovery (04/2017)	3,265.00		13,265.00	55622915
4/1/2017	Retail - Parking Income (04/2017)	125.00		13,390.00	55622916
5/1/2017	Retail - Rental Income (05/2017)	10,000.00		23,390.00	56119726
5/1/2017	CAM-Common Area Maint-Recovery (05/2017)	3,265.00		26,655.00	56119727
5/1/2017	Retail - Parking Income (05/2017)	125.00		26,780.00	56119728
5/2/2017	chk# PSID114282742--006375 Terminal PSID 114282742 - CHECK21		13,390.00	13,390.00	38894629
5/18/2017	chk# PSID115307866--006401 Terminal PSID 115307866 - CHECK21		13,390.00	0.00	38998524



6/1/2017	Retail - Rental Income (06/2017)	10,000.00		10,000.00	<u>56628493</u>
6/1/2017	CAM-Common Area Maint-Recovery (06/2017)	3,265.00		13,265.00	<u>56628494</u>
6/1/2017	Retail - Parking Income (06/2017)	125.00		13,390.00	<u>56628495</u>
6/8/2017	chk# PSID117715134 Terminal PSID 117715134 - CHECK21		13,390.00	0.00	<u>39233092</u>
7/1/2017	Retail - Rental Income (07/2017)	10,000.00		10,000.00	<u>57163980</u>
7/1/2017	CAM-Common Area Maint-Recovery (07/2017)	3,265.00		13,265.00	<u>57163981</u>
7/1/2017	Retail - Parking Income (07/2017)	125.00		13,390.00	<u>57163982</u>
8/1/2017	Retail - Rental Income (08/2017)	10,000.00		23,390.00	<u>57709890</u>
8/1/2017	CAM-Common Area Maint-Recovery (08/2017)	3,265.00		26,655.00	<u>57709891</u>
8/1/2017	Retail - Parking Income (08/2017)	125.00		26,780.00	<u>57709892</u>
9/1/2017	Retail - Rental Income (09/2017)	10,000.00		36,780.00	<u>58263662</u>
9/1/2017	CAM-Common Area Maint-Recovery (09/2017)	3,265.00		40,045.00	<u>58263663</u>
9/1/2017	Retail - Parking Income (09/2017)	125.00		40,170.00	<u>58263664</u>
10/1/2017	Retail - Rental Income (10/2017)	10,000.00		50,170.00	<u>58810579</u>
10/1/2017	CAM-Common Area Maint-Recovery (10/2017)	3,265.00		53,435.00	<u>58810580</u>
10/1/2017	Retail - Parking Income (10/2017)	125.00		53,560.00	<u>58810581</u>
11/1/2017	Retail - Rental Income (11/2017)	10,000.00		63,560.00	<u>59364355</u>
11/1/2017	CAM-Common Area Maint-Recovery (11/2017)	3,265.00		66,825.00	<u>59364356</u>
11/1/2017	Retail - Parking Income (11/2017)	125.00		66,950.00	<u>59364357</u>

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re: The Yoga Center, LLC Debtor.	Case No. 17-42115-KAC Chapter 11 Case
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ORDER GRANTING RELIEF FROM STAY

This case is before the court on the motion of CLPF-Velo, LLC for relief from the automatic stay imposed by 11 U.S.C. § 362(a).

Based on the record, the court finds that grounds exist under 11 U.S.C. § 362(d) to warrant relief.

IT IS ORDERED:

1. The motion for relief from stay is granted as follows:
2. The automatic stay imposed by 11 U.S.C. § 362(a) is terminated such that the movant may exercise its rights and remedies under applicable non-bankruptcy law with respect to the following property:

103 North Second Street, Minneapolis, MN 55401, Hennepin County

3. Notwithstanding Fed. R. Bank. P. 4001(a)(3), this order is effective immediately.

Dated: _____

United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
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UNSWORN DECLARATION FOR PROOF OF SERVICE

I, Christopher Kalla, attorney with Hanbery & Turner, P.A., licensed to practice law in this court, with the office address of 33 South Sixth Street, Suite 4160, Minneapolis, MN 55402 declares, that on November 8, 2017, I served the annexed documents:

1. Notice of Hearing and Motion
2. Memorandum of law in support of motion for relief from stay in order to commence eviction proceedings
3. Affidavit of Liz Simpson and attached Exhibit A
4. Proposed order

by mailing to them a copy via first class mail

The Yoga Center, LLC
103 N. 2nd Street
Minneapolis, MN 55401

Neil Reimer
201 S. 11th St., Unit 2320
Minneapolis, MN 55403-2774

and delivered by e-mail notification under CM/ECF on the day e-filed with the court to each of them as follows:

Office of the United States Trustee

Michael Sheridan, Esq.
Atlas Law Firm
7900 International Drive, Suite 300
Bloomington, MN 55425-2562

Dated: November 8, 2017

/s/ Christopher T. Kalla
Printed Name: Christopher Kalla